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the time when the cause of action accrued for or against such assignee." This case would seem to be an authority for the decision of the principal case, but upon investigation it will be found to have been based wholly upon *Bailey* v. *Glover*,[8] which merely held that fraud until discovered, would prevent the operation of a similar statute, and the court expressly stated that they did not consider the statute of limitations as a part of the bankruptcy act. Under this view the limiting statute could not be a condition precedent unless specifically stated to be such, consequently the case could not be deemed a precedent for the principal case.

T. S. P.

FALSE IMPRISONMENT—IS THE REFUSAL TO AID THE EQUIVALENT OF DETENTION?—A very interesting question in the law of false imprisonment arose in a recent case decided by the Court of Appeal of England.[1] The plaintiff, a coal miner, went down on a shift at about 9.30 in the morning for the purpose of working for the defendants, his employers. The shift was for a period of seven hours. When he had reached the bottom of the mine he was ordered by his employers to do certain work, and he wrongfully refused to do it. He requested to be taken to the surface again; but by the order of his employers, he was not allowed to use the shaft elevator (which was the only means of reaching the surface) until 1.30 o'clock. He brought an action for damages for false imprisonment in respect of his detention. Lord Justices Buckley and Hamilton held that the fact that the defendant did not grant the plaintiff the facility for coming up to the surface did not constitute a false imprisonment. Hamilton, L. J., said that he would not go into the question of whether it was or was not an implied term of the contract that the employers should furnish the means of getting to the surface at any time, for even if there was such term, the remedy for non-compliance would be an action for breach of contract, and it could not, merely because the plaintiff was detained, be construed into the commission of a tort. Lord Justice Vaughan Williams, dissenting, thought there was an unlawful imprisonment.

It is obvious that there is room for difference of opinion upon the question; but to the mind of the writer the dissenting opinion is the more reasonable view.

One may refer to the definition of Thorpe, C. J., in Year Book of Assizes,[2] that a person is said to be imprisoned "in any case where he is arrested by force and against his will, although it be on the high street or elsewhere, and not in a house"; or to Sir Wm. Black-

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[8] 21 Wall. 342 (U. S. 1874).

[1] Herd v. Weardale Steel Co., Ltd., *et al.*, 109 L. T. 457 (Eng. 1913).

[2] Fol. 104, plac. 85 (1348).

stone's definition that "every confinement of the person is an imprisonment"; but such definitions, couched in general terms, are of little aid in determining a delicate question like the one before us. It seems to be agreed that "the wrong may be committed by words alone or by acts alone, or by both, and by merely operating on the will of the individual or by personal violence, or by both."[3] Furthermore, as held in the leading English case of *Bird* v. *Jones*,[4] *per* Coleridge, J., imprisonment is something more than mere loss of freedom or ability to go wheresoever one pleases; it includes the action of restraint within limits defined by a wall or an exterior barrier.

Was there a restraint in the case before us? Lord Justice Buckley answers the question in the negative; for, says he,[5] the defendants must have compelled the plaintiff against his will to stay in that place, and that is not true in this case: "It is quite true that he could not leave the place, but he was detained in that place, not by any act of his master, but by a certain physical difficulty arising from the structure of the place. What kept him from the surface was not any act which his master did. The master says: 'I am not preventing you from getting out; get out by all means, if you can. But you cannot call on me to take you out.' One man imprisons another if he prevents him from leaving; but he does not imprison him merely because he does not assist him to come out." This reasoning is on its face over-technical; the learned Lord Justice himself admits that he reaches a technical result. It is a mere flippancy of words to say to a man: "Get out if you can," when he himself controls the sole means of getting out. The law treats of actualities, and not of abstract technicalities. Lord Justice Vaughan Williams takes the practical and sensible view: "The case to my mind does not differ a jot from the case where there is a staircase instead of a lift, and the manager has the key of the gate in his pocket, but being asked to open the gate which gives access to the stairs chooses to refuse to produce the key, and thus of his own will prevents the man from using the staircase for no other reason whatsoever than of his own will."

Lord Justice Buckley seems to have been swayed by the idea that it was not the employer's duty under the contract to furnish the plaintiff the means of getting to the surface until the seven hours had expired. This seems, however, to be confusing the contractual relation and the social relation of the plaintiff and his employers. If the plaintiff has broken his contract by quitting work before the seven-hour period, he has subjected himself to liability in damages for breach of contract. But plaintiff has not given up his liberty for

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[3] Garnier v. Squiers, 62 Kan. 321 (1900).

[4] 15 L. J. Q. B. 82 (Eng. 1845).

[5] 109 L. T. at page 462.

a period of seven hours, and when he quit work, he had a right to be given his freedom and could not be lawfully detained.

In a recent case in Maine,[6] on very analogous facts, the court decided, as Lord Justice Vaughan Williams did in the case under consideration. There, the defendant had taken the plaintiff out on a yacht, having promised to take her ashore whenever she desired; but though the plaintiff several times requested the defendant to take her ashore or to furnish her with a boat, the defendant refused so to do. The court held that there was an unlawful detention; and this though the suit was not based upon the defendant's failure to keep his agreement to take the plaintiff ashore, but an action in tort for false imprisonment.

Y. L. S.

PROPERTY—RIGHTS OF UPPER AND LOWER RIPARIAN PROPRIETORS—DIVERSION OF WATER—For the first time in Massachusetts, the precise point whether riparian rights include diversion in reasonable quantities for a proper use on property outside the watershed has been passed upon by the Supreme Court. In an action by a lower riparian owner on a small stream against an upper riparian owner who by means of a pumping apparatus diverted large quantities of water to another estate belonging to it, but not contiguous to the land adjacent to the stream, and also located in a different watershed, it was held that the only question is whether there is actual injury to the lower estate for any present or future reasonable use. The diversion alone without evidence of such damage does not warrant a recovery even of nominal damages.[1]

It has been said that the rights of riparian ownership extend only to use upon and in connection with an estate which adjoins the stream and cannot be stretched to include uses reasonable in themselves, but upon and in connection with non-riparian estates.[2] A riparian proprietor is one whose land is bounded by a natural stream, or through whose land it flows, and riparian rights are those which he has to the use of the water of such stream, and grow out of and depend upon the ownership of such land.[3] A difficulty then arises in determining when part of an entire tract of land owned by one person ceases to be riparian. There does not seem to be any rule regulating such a question, and for this reason it seems best not to confine the use to riparian lands and to exclude non-riparian.

In the main, it is true, the use by a riparian owner by virtue of his right as such should be within the watershed of the stream, or

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[6] Whittaker v. Sandford, 85 Atl. Rep. 399 (Me. 1912).

[1] Stratton v. Mt. Hermon Boys' School, 103 N. E. Rep. 87 (Mass. 1913).

[2] Lord Cairns in Swindon Water Works Co. v. Wilt and Berks Canal Navigation Co., L. R. 7 H. L. 697, 704, 705 (Eng. 1875).

[3] Gould, Waters (3rd Ed.), §148; Kinney, Irrig., §57.